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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
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DIRECTOR

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DIRECTOR

MIOSHA CONSTRUCTION SAFETY STANDARD  
PART 28 PERSONNEL HOISTING IN STEEL ERECTION  
ADVISORY COMMITTEE MEETING

July 29, 2013 – 9:00 a.m.  
State Secondary Complex, 7150 Harris Drive, Lansing, Michigan, 48909  
General Office Building, Conference Room A

**MEETING MINUTES**

**ADVISORY COMMITTEE MEMBERS PRESENT:**

Derek Sather.....Operating Engineers Local 324 JATF  
Kevin McDonell.....Iron Workers Local 25 Apprentice Training Center  
Lawrence Kruth .....Douglas Steel Fabricating Corporation  
Lee Graham.....Operating Engineers Local 324 JATF  
Pete Anderson .....Associated General Contractors of Michigan  
Robert Coppersmith Jr. ....Michigan Infrastructure and Transportation Association (MITA)  
Todd Foreman.....Iron Workers Local 340 Training

**ADVISORY COMMITTEE MEMBERS ABSENT:**

Eric Krieger.....HNI Risk Services  
Gerald Mendek.....C.L. Rieckhoff Co. Inc.

**MIOSHA STAFF PRESENT:**

Martha Yoder .....MIOSHA Director  
Bart Pickelman .....MIOSHA Deputy Director  
Ron Ray .....MIOSHA Wage Hour and Technical Services Division Director  
Dan Dykstra .....Standards Section Program Manager  
Patty Meyer .....Construction Safety & Health Division Director  
Paul Wrzesinski .....Construction Safety & Health Division Manager  
Paul Griggs.....Consultation Education & Training Division Safety Consultant  
Toscha Densmore.....Standards Section Secretary  
Dena Hendon .....Standards Section Analyst  
Mike Sharpe .....Laboratory and Equipment Services Section Analyst  
Bradley Redinger .....Construction Safety & Health Division Senior Safety Officer

**GUESTS PRESENT:**

Bill Treharne .....Midwest Steel  
Butch Redinger .....Redinger Steel Erectors Inc.

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Colin Millard.....Iron Workers International  
Dave Gonzalez .....Iron Workers Local 25  
Dennis Aguirre II .....Iron Workers Local 25  
Jack O'Donnell .....Iron Workers Local 25  
Jimmy Horvath II.....Iron Workers Local 25  
John Hartwell .....Operating Engineers Local 324 JATF  
Mike Mansfield .....Iron Workers Local 25  
Pat Buck .....Iron Workers Local 25  
Steve Rank .....Iron Workers International Union

### **Call to Order**

The July 29, 2013 Construction Safety Part 28 Personnel Hoisting in Steel Erection, (CS Part 28), advisory committee meeting was called to order by Standards Manager Dan Dykstra at 9:05am. A quorum of advisory committee members was present.

### **Advisory Committee member duties, responsibilities and policies – Dan Dykstra**

Mr. Dykstra provided a quick review of the Department of Licensing and Regulatory Affairs – Code of Conduct and the Conflict of Interest Policy for Boards, Commissions, Agencies, Authorities and Committees. Mr. Dykstra also explained the travel reimbursement process and notified the committee members if they wanted to be reimbursed for mileage, to please take a moment after the meeting to fill out the necessary paperwork.

Introductions of the advisory committee members and MIOSHA staff were made.

### **Introduction of issue – Martha Yoder**

MIOSHA Director Martha Yoder welcomed the advisory committee members and thanked them for assisting with the committee. Ms. Yoder also thanked the public for attending and providing their input.

Ms. Yoder provided a brief background on how historically commissions and committees would look at the MIOSHA rules and would assist in the rule writing. CS Part 28 originated from the work of an advisory committee. At the beginning of this year, legislation was passed eliminating the three commissions from the MIOASH Act. MIOSHA has since created a policy regarding the use of advisory committees for any rule promulgation and other activities. The advisory committee for CS 28 is the first committee under the new policy.

There is a long history on the CS Part 28 standard. Rule language addressing connectors performing steel erection by riding the headache ball in certain situations has been on the books for over 20 years. In March of 2013, federal OSHA expressed some concerns and since the federal standard covering these practices had been revised, they requested that MIOSHA review the standard.

Construction Safety & Health Director Patty Meyer stated that MIOSHA has not seen the riding of headache balls that often. Ms. Meyer asked the committee if this is something that is still used; is it something still wanted; and is this something that everyone feels is the safest practice?

OSHA feels it is not a safe practice, and they would require that a work platform or a basket be used.

Ms. Yoder stated that federal regulation 1926.1431, Cranes & Derricks in Construction, was updated to state that the headache ball, hook, and the load, should not be used to transport personnel except when using a personnel platform or boatswain chair. Due to those changes, they requested MIOSHA to revisit our standard.

Ms. Yoder thanked the advisory committee members again for being a part of this process. The information gathered at this meeting will be used to help develop a response to send to OSHA.

Mr. Dykstra pointed out that the goal of this meeting is to provide input and recommendations on whether to keep or eliminate the standard.

**Review input received to date – Dan Dykstra**

Mr. Dykstra informed the committee that the input received in regards to CS Part 28 was primarily received via website and a mailed survey. Approximately 250 surveys were mailed out. MIOSHA also received some letters from the industry and copies of those letters are in the packets.

Mr. Dykstra went over the two questions asked. 1) How often, if ever, does your company allow workers to ride the headache ball in the course of your work? and 2) Do you support the practice of allowing the connectors to ride the headache ball?

Mr. Dykstra went over the results for each response from both the website and the mail surveys. The website response to question number 1); 40 responded “never”, 11 responded “rarely” and 11 responded “often.” The mailed responses to question number 1): 18 responded “never”, 6 responded “rarely” and 1 responded “often.” The website response to question number 2): 32 responded “yes,” 26 responded “no” and 4 responded “not sure.” The mailed responses to question number 2); 14 responded “yes” and 9 responded “no.” Both had very similar results that riding the headache ball is not often used, but that the majority support allowing the connectors to ride the headache ball where necessary.

Mr. Dykstra pointed out the public comments received via the website survey are included in the packets provided. Letters were received from industry groups, all in favor of keeping the standard. Also information received from OSHA is included in your packets. OSHA provided two accidents that occurred in 1999 from the federal reporting system that were related to employees being hoisted on a headache ball.

Mr. Derek Sather asked if the website survey had a way of verifying that the comments were received from those within the industry. Mr. Dykstra stated it was confidential but those who provided names were from the industry.

Mr. Lawrence Kruth asked about the mail survey response. He inquired on the percentage of responses. Mr. Dykstra stated out of the 250 mailed out, we did receive about 100 back.

Mr. Sather asked about the federal input. He wants to know if there is more information available. Were these accidents in Michigan and did they follow CS Part 28? Ms. Meyer stated the two accidents did not take place in Michigan. Ms. Yoder suggested going to the OSHA website and entering the inspection number for further information on the two accidents.

Mr. Pete Anderson asked if a recommendation is required today or if a future meeting would be held. Mr. Dykstra stated it will depend on the outcome of today's meeting.

### **Committee member discussion**

Mr. Sather presented a video/power point to the committee and public, to show the different means of access to a steel structure and to show their support of using the headache ball. The video showed workers riding the headache ball to a platform and then riding the headache ball back to the ground. All workers involved in the video have had proper training. The video also showed workers entering and exiting a basket (work platform). Mr. Sather pointed out that there are pinch points between the basket and the steel structure, more steps involved with using the basket and more chances for errors, and harder to control the spin of the basket. The use of a ladder is not always stable. A boatswain's chair is used mostly when the worker more remains in the chair, not for entering and exiting; and also provides more chances for injury and/or falls.

Mr. Dykstra thanked Mr. Sather for his presentation and opened the meeting to the advisory committee members for discussion.

Mr. Kruth, in reviewing the input provided from federal OSHA, pointed out in regards to the third bullet, "Personal Fall Arrest Systems (PFAS) currently in use are not readily adaptable to attachment to the hoist line or the hook and riders would therefore be exposed to falls due to the increased likely hood of PFAS failures", that there are lanyards available that tie to your feet. The fourth bullet mentions the headache ball size is not specified, and he feels that the requirement "a minimum of half-inch diameter load line shall be used" should govern the size of the headache ball. The last bullet point states the headache ball plate platform is not designed by a registered professional engineer, he says he does agree with that statement.

Mr. Robert Coppersmith stated he polled some bridge workers who informed him that they have eliminated the use of headache ball, but do see situations where it should be allowed.

Mr. Todd Foreman feels the use of the headache ball is a tool in the toolbox that should not be taken out. He feels it should be kept for when it is needed. He believes it is spelled out in the current standard that eliminates someone using the headache ball when not trained.

Mr. Kevin McDonell thinks the headache ball has simplicity compared to the other options. He feels the contractor should have all options. Mr. McDonell agrees to leave that tool in the toolbox. He also stated he feels that carrying the work equipment needed for a job up a ladder is a hazard in itself.

Mr. Lee Graham feels with the proper training, this standard should be kept.

Mr. Anderson feels the option should be there as needed in special circumstances. He feels MIOSHA is as effective as federal OSHA. If it is the safest way to get to the location, he believes it should be kept. He wonders if the standard is eliminated, what will happen. Special circumstances would arise and he believes the steel erectors would then have to request for a variance of the rules. Mr. Anderson receives monthly a list of the top 30 rule violations for MIOSHA and for the last 2 years, he was unable to find where CS Part 28 was cited for non-compliance. He knows there is limited use, but has not heard of any accidents and does not understand why OSHA wants to eliminate the standard.

Ms. Meyer stated OSHA wants us to look at the standard because other states have not had any fatalities while using a work platform. Ms. Meyer asked why MIOSHA has not seen employees riding the headache ball more often. Mr. Coppersmith stated it may be because of Rule 408.42809(2)(b), due to sign off for liability. Mr. Kruth stated that since CS Part 28 was written there has been a downturn in the economy and due to this downturn, contractors have left the state and ended up rewriting their safety standards to comply with federal OSHA. When returning to Michigan they are keeping with the policies used in other states.

Mr. Graham asked if MIOSHA knows what the accident rates are across the United States for the aerial lifts. Ms. Meyer stated she found 362 accidents/incidents involving ironworkers accessing and egressing in the federal reporting system and most involved ladders and aerial lifts.

**Public appearance requests – Mr. Steve Rank, Executive Director of Safety and Health, Iron Workers International Union**

Mr. Steve Rank is here on behalf of the Iron Workers International Union. Mr. Rank is in attendance to show support for keeping CS Part 28. Mr. Rank complimented MIOSHA and the advisory committee members for coming together to discuss the importance of CS Part 28. Mr. Rank stated he agrees with the video that Mr. Sather presented and that he would like to use their video in other states.

Mr. Rank would like to push OSHA to reconsider their stand on CS Part 28 and ask them to allow this in other states. He discussed aerial lift equipment, and how when it first came out, everyone believed it to be the magic wand. He stated once workers started doing all the work out of aerial lifts, we saw an increase in fatalities and disabling injuries across the United States and Canada. He mentioned a few fatalities across the country where he felt that if they were allowed to use the headache ball, there may have been a different outcome. Mr. Rank believes the use of riding the headache ball should be allowed if it is being used at the right time(s).

Mr. Rank stated that IMIS data that was provided to him from OSHA showed over 52% of 673 fatalities were not related to ironworkers, and they were not falls but structural collapses.

In regards to personal fall arrest systems (PFAS), Mr. Rank feels that OSHA knows you can tie off at your feet. Mr. Rank stated that around 1996 OSHA issued a "Letter of Interpretation" named M5 that states you can tie off at your feet if there is no other anchorage points above, as long as you minimize the fall risk for it.

Mr. Ranks wants to continue fighting for what works in the field, and believes CS Part 28 works. Mr. Rank expressed concern that federal OSHA should have been in attendance at the meeting today to hear the stakeholders input and to notify Washington DC of what they heard. Mr. Rank thanked Ms. Yoder for hosting this meeting and allowing the stakeholders to provide input.

### **Public Comment**

Mr. Jack O'Donnell from Ironworkers Local 25 stated he appreciates what Mr. Rank and Mr. Foreman stated as they pretty much said what he wanted to say. The option of riding the headache ball is a process that is not used every day, but he feels it should be kept. Insurance companies, general contractors, and contractors of Local 25 do not necessarily want to use the process but feel if ever needed, including an emergency need, it should be available. Mr. O'Donnell is upset about OSHA sending information for this meeting in regards to a tree trimmer. Mr. O'Donnell supports keeping the standard as it is.

Mr. Bill Treharne from Midwest Steel provided a brief background on himself. Mr. Treharne was a MIOSHA CS Part 28 advisory committee member and had a part in restricting the criteria for riding the headache ball, was on the National Records Association for approximately 30 years, a member of the ANSI A.10 committee for 19 years, and chairman for the ANSI A10-13 committee for many years. In all his years of committee work, he tries to bring common sense to the rules in the field. Mr. Treharne believes if you give the workers the tools to make the job safe, they will do it. He has seen no issues in 49 years involving injury while using headache ball. He has been trying to get OSHA to accept the use of riding the headache ball for many years. Mr. Treharne supports keeping the standard.

Mr. John Hartwell from Operating Engineers Local 324 stated he is in support of CS Part 28. Mr. Hartwell stated he believes other states are riding the headache ball even though they have no standard. He feels if the standard is removed, it would still be utilized, but would not be a tool with as many controls. He stated with training for the proper way to use headache ball, it is a valuable tool in the tool box.

Mr. Colin Millard, President of Iron Workers District Council of North Central States is in attendance to show support for CS Part 28. He feels the standard is very well written, and that MIOSHA has the best process for the writing of the rules and regulations. He believes the time going into the planning of the use of the headache ball needs to be considered. Mr. Millard feels OSHA should have someone in attendance if they want the standard eliminated.

### **Committee Recommendation**

Mr. Kruth asked if the advisory committee members were to give a recommendation to keep this standard, what repercussions would MIOSHA receive. How political will it get? Ms. Yoder responded that MIOSHA will take the input received today and then make a decision on how to respond to OSHA. Ms. Yoder provided a brief description of the process.

Mr. Anderson wants to know why OSHA does not have to demonstrate why they believe the standard is not "as effective as" OSHA? The two examples provided by OSHA have nothing to do with iron workers. Mr. Anderson asked how insurance companies handle this issue. Mr. Kruth stated their insurance company has not stated they should not use it. Mr. Dykstra pointed

out a committee member, who was unable to attend, is with an insurance company, and that the question is a good question. Mr. Coppersmith stated most insurance companies will say to follow MIOSHA regulations. Mr. Treharne stated Amerisure is behind the safety program for his establishment. Mr. Butch Redinger stated his insurance company advises him to follow MIOSHA regulations as well. Mr. Rank mentioned a few major carriers that are more worried about risk management. He stated he can provide letters from major carriers in support of risk management.

A motion was made by Mr. Graham to keep the standard intact, and seconded by Mr. Kruth.

MIOSHA Deputy Director Bart Pickelman mentioned that OSHA brought up that standing on the shackle is allowed by MIOSHA and asked does anyone use this? Mr. Kruth stated this was added as it was felt it was safer to lock feet into a shackle then it was to stand on a platform, and it was demonstrated how it was done and it was added. Mr. Kruth stated they do not use it. Mr. O'Donnell stated they very rarely use this process. Mr. Treharne stated a shackle is available for his workers. Mr. Redinger stated he started in the 60's and did not receive training back then. He applauds the training that is provided now and feels is it done in a safe manner.

Mr. McDonell commented that structure training is based on CS Part 28. Ms. Meyer asked Mr. Kruth why training was not mentioned in Part 28. Mr. Kruth stated it is referenced in CS Part 26 and that it does state a designated connector in Part 28. Mr. Graham stated that hoisting apprentices must complete the training. Mr. Sather added about the use of a shackle, not all cranes have the plate and a shackle can be used.

Mr. Dykstra reminded the committee that a motion was made and seconded, and asked if there is no further discussion, a vote is in order. **MOTION CARRIED UNANIMOUSLY.**

Ms. Yoder asked that if anyone in attendance had any documentation or helpful information she can forward to OSHA that it be sent to Mr. Dykstra so she can submit it to OSHA with our response.

Ms. Meyer asked Mr. Kruth why the committee required certification in writing. Mr. Kruth does not recall the reason for it being added, he believes it was that if it was not in writing, then it did not happen so it had to be documented a meeting was held.

### **Adjournment**

With no further business before the advisory committee, the meeting was adjourned at 11:30.